

Frequently Asked Questions on recording the disability status of staff in the Public Service - Part 5 Disability Act 2005

Legal obligation on public bodies to employ staff with disabilities

Under the Disability Act 2005, public bodies are legally obliged

- in so far as is practicable, take all reasonable measures to promote and support the employment of people with disabilities, e.g., written action plans on supporting staff with disabilities, adjustments or supports for staff with disabilities
- to reach a target proportion of employees with disabilities, currently 3%

The Frequently Asked Questions below have been prepared to offer guidance to public bodies and individuals on determining whether someone is included in the returns as a staff member with a disability. It does not purport to be a legal interpretation of the Disability Act 2005.

A positive action measure

The 3% target for the employment of people with disabilities in the public service is a positive action measure designed to ensure public service employers are proactive in providing employment and career opportunities for a group who face a higher than average risk of exclusion from employment. The 2006 Census showed that just 35% of people with disabilities of working age (20-64) had a job, compared with 74% of non-disabled people.

This understanding of a group at significant risk of exclusion underlies the definition of disability that now applies to this target under the terms of the Disability Act 2005. This definition of disability covers a narrower group than the Equality legislation, so as to allow resources and positive measures to be focused on areas of most need.

Definition of disability

What counts as disability?

The Disability Act 2005 defines disability as:

‘disability, in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment’.

So it must be a long-term condition....

That means one that has continued or is expected to continue for 12 months or more. This includes long lasting conditions (e.g., multiple sclerosis, schizophrenia) where people experience intermittent difficulties. It does not include temporary incapacity e.g. a broken leg or arm.

.... that substantially restricts capacity

It must be a condition that could substantially restrict your capacity to participate in work, in social life or in leisure activities like watching TV, going to a concert or a match. This does not include minor problems that do not interfere with participation in everyday life, such as mild diabetes or wearing glasses (where you can see well with them).

Examples of different types of disabilities

- **A physical impairment**

Something that substantially restricts one or more basic physical activities such as walking, climbing stairs, reaching or lifting or chronic illness such as multiple sclerosis or epilepsy. Do not count temporary incapacity, such as a broken leg or arm.

- **A sensory impairment**

A severe vision, hearing or speech impairment. Do not count wearing glasses or lenses unless you have difficulty seeing even when using them.

- **A mental health impairment**

For example chronic depression, schizophrenia, eating disorders.

- **An intellectual disability**

For example Down Syndrome.

Many long-term medical conditions may lead to substantial restrictions in everyday life, and are widely accepted as constituting a disability, for example paraplegia, blindness, intellectual disability. There is not, however, a definitive list of conditions that constitute “disability” in the terms of the Disability Act 2005. The key test is whether the condition substantially restricts someone’s capacity to participate in such areas of everyday life as work, social life, cultural or leisure activities. Mild or easily managed levels of a particular medical condition may

pose only a minor restriction in capacity, whereas more severe or difficult to manage degrees of the same condition would constitute a disability.

Frequently asked questions

This section provides answers to questions that may arise in relation to completing the monitoring form for **ALL** employees on their disability status under the Disability Act.

Queries in relation to answering the disability status question

1. Do I answer this question even if, in my opinion, I do not have a disability according to the definition in the Disability Act 2005?

The question on disability status should be answered by all staff. In this case you should answer “No” and return your answer to the nominated official(s) in your organisation/Department, signed and dated.

2. Should it be my opinion only whether I have an impairment or what other people have told me?

Your impairment, be it: physical; sight, hearing or speech; intellectual disability; or mental health should have been diagnosed by a qualified professional.

3. Will I have to undergo a medical examination to be counted as a person with a disability?

No special medical examination is required in order to be included in the count of people with disabilities working in your organisation. This is a statistical count and will not require anyone to undergo a medical assessment or to produce evidence of a particular condition. However, only count yourself as having an impairment if this has been diagnosed by an appropriate professional and your impairment substantially restricts your capacity.

4. I’m well able to do my job

You can answer “yes” to the question on disability status if you need some type of special assistance, accommodation or assistive technology to do your job, e.g. adapted desk or chair, JAWS software, or if you face difficulties related to your impairment in other areas of everyday life such as using facilities, socialising, travel and getting around.

5. If I choose to disclose, who will have access to this information?

This confidential question and the information collected are for the purpose of calculating how your employer is meeting the target established by law that a minimum of 3% of employees in the public service should be people with disabilities. It will only be used for statistical purposes. The only person(s) who

will have access to your form will be the person(s) nominated to record and file the data. Strict confidentiality will be maintained in line with best practice.

6. What do you mean by “long-term”?

“Long-term” means that your condition persists for an extended period of time. If you have a condition that is likely to resolve itself within the next 12 months then it is unlikely to be considered long-term. Equally if you are likely within the foreseeable future to recover completely from your condition it is also not likely to be considered as a long-term condition.

7. If my condition occurs from time to time but does not last for long each time, is that a long-term condition?

If you have a condition which persists over time but which occurs on a cyclical basis, and when it occurs requires you to make adjustments and accommodations, then it is long-term. For example, a person with MS, which may flare up intermittently, would be considered to have a long-term condition even though that person has not had a relapse for an extended period of time.

8. Should I be included if I have a temporary incapacity such as a broken leg?

No. Any condition that will result in a full recovery within the foreseeable future is not covered by this disability status question.

9. Which basic physical activities are being referred to?

A physical impairment is one that affects your body. You also have a physical impairment where you would have significant difficulty with walking, climbing stairs, reaching, lifting or carrying things, or physically carrying out other routine activities of daily life.

10. What counts as a mental health condition?

Where you have had a long-term mental health condition diagnosed by a medical professional. Examples of such conditions are schizophrenia and bipolar disorder.

11. What about a chronic illness – is that a disability?

A chronic illness may constitute a disability where it would significantly restrict your capacity to work or to participate in social or cultural life or the routines of everyday life. Easily-managed chronic conditions such as mild asthma, diabetes or heart conditions would not constitute a disability in this sense, but more severe asthma, diabetes or heart conditions that substantially limit your functioning and restrict your participation in everyday activities would constitute a disability.

12. What constitutes a substantial difficulty in participating in everyday life, work, social or cultural activities?

This would arise if there are activities of everyday life you cannot do at all, which you can only do with difficulty or where to manage you need special assistance, specialist technical aids, or special adjustments to be made to your work or living environment or to premises or services you want to use. These everyday activities could include work, travel, socialising, accessing venues, watching TV, listening to music or going to the cinema. However, wearing glasses or contact lenses does not constitute disability unless you face significant difficulties even with these supports.

This may also arise if there are significant restrictions on the type of tasks you can perform, or the kinds of job you could do.

13. What is meant by social, leisure or cultural activities?

This includes a wide range of social activities you would do such as visiting or going out with friends, driving and using transport to get to where you want to go, travelling abroad, listening to music, going to the cinema or a match, playing sport, watching TV or a video. This is not a comprehensive list. If you experience significant restrictions in any of these areas of your life outside work due to an impairment, you are considered to have a disability for the purposes of the employment target.

14. Why is this information on the disability status of employees being collected?

This information is being collected because under the Disability Act 2005 all public bodies are required by law to report on the numbers of people employed in their organisation who have a disability and also to promote and support the employment of people with disabilities. Public bodies are also required to achieve a statutory minimum target share of 3%, according to the definition of disability in the Disability Act 2005.

15. How will the information I provide be used?

It will be used to count the proportion of people in your organisation who have a disability. Anonymised information will be put together by a nominated official(s) in your Human Resources section and sent to a monitoring committee in your parent government department (with trade union and disability representatives) that monitors the 3% target for employing people with disabilities in the public service. In turn, statistical information on the proportion of employees in different public service organisations who have a disability will be reported on, by the National Disability Authority (NDA), to the Minister of State for Disability and Mental Health. At all stages the information will be transferred anonymously.

The answer you provide will be stored securely and separately from your main personnel file.

16. How will this information be helpful in increasing the level of employment for people with disabilities?

Part 5 of the Disability Act 2005 deals with promoting and supporting the employment and career development of people with disabilities. The statistical information will inform the NDA in making recommendations to employers about the ways in which people with disabilities can be recruited, retained and promoted at work. Where there are examples of good practice they can be shared. The Act also provides that any Minister can specify new targets above the statutory minimum 3%.

17. How can I be certain that my information remains confidential?

The only person(s) who will see your answer to the question on disability status is the nominated official(s) in your Human Resources section. Strict confidentiality will be maintained in line with best practice. The statistical information provided based on this information will be completely anonymous. The information you provide will be stored securely and separately. Recommended best practice is that this information is filed separately from your main Personnel file and is deleted when you leave this employment.

At all stages you have the right to see your disability status record and to ask that the details on your disability status file be amended if your circumstances change

18. If I have answered Yes to the question on disability status, but have not disclosed my disability before now, will the nominated official(s) in my organisation/Department try and contact me about it?

The answer you give will be treated with the strictest confidence. Nothing further can happen without your prior knowledge and consent.

If you are informing your employer for the first time that you have a disability, you may also wish to discuss with a designated official any requirements you have to accommodate your disability, including any health and safety issues for you. Your employer is legally obliged under Employment Equality law to reasonably accommodate an employee with a disability. For example you may require assistive technology, changes to the workplace, changes to your duties or to your work pattern. Your employer also has a duty of care to you under health and safety legislation, for example to ensure you can safely evacuate the workplace in the event of an emergency. Some public service organisations have designated Disability Liaison Officers or Equality Officers who can advise and assist you. In other cases it is your Personnel Officer or HR Officer who can advise you.

19. Is asking people about their disability status not supposed to be about how many people are recruited not about how many people with disabilities are working in the public service?

The Disability Act 2005 allows the relevant Minister to set targets both for recruitment of people with disabilities, and for employment of people with disabilities. The current target relates only to the proportion of people with disabilities employed by individual public service organisations. These will include staff that became disabled during the course of their employment as well as those who had a disability when they joined.

The purpose is to provide equal opportunities for people with disabilities in the public service.

Collecting information on disability in the workplace will provide important information to inform the development of organisations as positive and supportive working environments.

The National Disability Authority, which provides independent advice to the government on disability issues, can recommend that individual public bodies undertake specific steps to improve recruitment, training and promotion of staff with disabilities, if an individual organisation is consistently failing to reach its target.